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OPINION	:	No. 79-1006
	:	
of	:	<u>January 24, 1980</u>
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SUBJECT: INFORMATION PRACTICES ACT—Provisions of the Information Practices Act of 1977, as amended, do not preclude the Department of Real Estate from disclosing the names and addresses of real estate license applicants to members of the news media.

The Honorable David A. Robert, Senator for the 23rd District, has requested an opinion on the following question:

Do the provisions of the Information Practices Act of 1977, as amended, preclude the Department of Real Estate from disclosing the names and addresses of real estate license applicants to members of the news media?

CONCLUSION

The provisions of the Information Practices Act of 1977, as amended, do not preclude the Department of Real Estate from disclosing the names and addresses of real estate license applicants to members of the news media.

ANALYSIS

Pursuant to the Real Estate Law (Bus. & Prof. Code §§ 10000–10602), the Real Estate Commissioner issues real estate broker and salesperson licenses to those who have paid the application fee, qualified under the appropriate examination, and satisfied various other statutory requirements. (Bus. & Prof. Code §§ 10150–10153.7.)

We are informed that the Department of Real Estate receives approximately 100,000 applications for the salesperson license examination each year. Prior to 1978 the department regularly distributed copies of the names and addresses of examination applicants to approximately 150 persons each month.

In 1978 the Legislature revised the laws concerning the disclosure of certain types of information by state agencies. Since then, additional statutory changes have been made. The question presented for analysis is whether current California law prohibits the Department of Real Estate from disclosing the names and addresses of real estate license applicants to members of the news media. We conclude that it does not.

In determining the disclosure issue, we must examine two interrelated concerns: the right of privacy of individuals and the public's right to inquire regarding the conduct of government business. As was stated by the Court of Appeal in *Black Panther Party v. Kehoe* (1974) 42 Cal. App. 3d 645, 651–652:

“Government files hold massive collections which are roughly divisible into public business and private revelations. Statutory and decisional law on public record disclosure reveals two fundamental if somewhat competing societal concerns—prevention of secrecy in government and protection of individual privacy. The people's ‘right to know’ is a rubric which often accompanies disclosure claims. The ‘right to know’ demands public exposure of recorded official action. A narrower but important interest is the privacy of individuals whose personal affairs are recorded in government files. Societal concern for privacy focuses on minimum exposure of personal information collected for governmental purposes. The California courts have equated the right of privacy with the right ‘to be let alone,’ which must be balanced against public interest in the dissemination of information demanded by democratic processes.”

The Legislature has enacted the California Public Records Act (Gov. Code § 6250–6260) to help protect the public's right of access to information concerning the conduct of

government business. Under section 6253 of the statutory scheme, “public records”¹ are open to inspection at all times during the office hours of state and local agencies unless specifically exempt under the provisions of section 6254² or unless “on the facts of the particular case the public interest served by nor making the record public clearly outweighs the public interest served by disclosure of the record.” (Gov. Code § 6255.) Each agency must provide a copy of any requested identifiable public record upon the payment of a fee or deposit. (Gov. Code §§ 6256–6257.) The general policy of the legislative scheme favors disclosure. (See *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal. App. 3d 931, 941; *Cook v. Craig* (1976) 56 Cal. App. 3d 773, 781.)

The Legislature has enacted a separate statutory scheme, the Information Practices Act of 1977 (Civ. Code §§ 1798–1798.76)³ to help safeguard the constitutional right of privacy of each person.

Under the general terms of section 1798.24, no state agency may disclose any “personal” or “confidential” information unless the disclosure of such information is specifically authorized under the statute. Personal information is generally defined as “any information in any record about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical or employment history.” (§ 1798.3, subd. (b).) “Confidential” information is defined in a number of ways (§ 1798.3, subd. (a)), each inapplicable to the names and addresses of real estate license applicants.

Significantly, subdivision (g) of section 1798.24 was recently amended by the Legislature on an urgency basis. (Stats. 1979, ch. 143, p. 560.) Formerly, it allowed the disclosure of personal information if authorized under the California Public Records Act *except for* “personal information contained in individual employment or medical files, or other personal information which would clearly be disparaging of or threatening to the reputation or rights of an individual other than a state employee acting in his or her official capacity.” This “exception” language, however, was removed from the statute by the amendment, and now subdivision (g) allows for the disclosure of any personal information authorized to be disclosed “Pursuant to the California Public Records Act.”

¹ “Public records” are defined as including “any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” (Gov. Code § 6252, subd. (d).)

² Section 6254 covers such matters as interagency memoranda, pending litigation material, confidential crop reports, security files, examination questions, and certain financial data. (See 62 Ops. Cal. Atty. Gen. 402, 403–405 fn. 1 (1979).)

³ All unidentified section references hereinafter are to the Civil Code.

We have reviewed the numerous provisions of the California Public Records Act and have found none that would exempt disclosure of the names and addresses of real estate license applicants by the Real Estate Commissioner to members or the news media under the limited facts given. (See *Lehman v. City and County of San Francisco* (1978) 80 Cal. App. 3d 309, 312.) The provision arguably most applicable is subdivision (c) of Government Code section 6254, which exempts disclosure of “Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.” We recently examined this provision in 62 Ops. Cal. Atty. Gen. 436, 439 (1979), with regard to the disclosure of the names and addresses of state bondholders by the Treasurer:

“The bond owner records reflect the actual conduct of the Treasurer’s public business, while personnel and medical files concern more private revelations collected for other than what is normally viewed as ‘recorded official action.’ (See *Black Panther Party v. Kehoe*, *supra*, 42 Cal. App. 3d 645, 651–652.)”

Although the names and addresses of real estate license *applicants* may be less concerned with official public business than the names and addresses of actual state bondholders, we nevertheless believe that such records are not similar to personnel or medical files, the disclosure of which would concern more private revelations. (See 62 Ops. Cal. Atty. Gen. 595, 600 (1979).)

In this regard, we have guidance from the Information Practices Act of 1977, specifically subdivision (c) of section 17983. It defines “nonpersonal” information, as including:

“Information consisting only of names, addresses, telephone numbers and other limited factual data, which could not in any reasonable way (i) reflect or convey anything detrimental, disparaging, or threatening to an individual’s reputation, rights, benefits, privileges, or qualifications or (ii) be used by an agency to make a determination that would affect an individual’s rights, benefits, privileges, or qualifications.”

It would appear that the Legislature intended to differentiate between certain disclosures of names and addresses by a state agency under the Information Practices Act of 1977. If such information reflects anything detrimental to a person’s reputation, rights or qualifications, the information would be “personal” and not subject to disclosure. On the other hand, if the information would not convey anything disparaging or threatening at be determinative of the person’s individual rights, it would constitute “nonpersonal”

information outside the scope of the statutory scheme.⁴

We believe that the names and addresses of real estate license applicants meet the test of “nonpersonal” information under section 1798.3, subdivision (c). Accordingly, such information would be outside the disclosure prohibition of the statutory scheme.

We have thus found two bases for concluding that the Real Estate Commissioner is not prohibited from disclosing the names and addresses of real estate license applicants to members of the news media under the Information Practices Act of 1977. Such information comes within the California Public Records Act for purposes of section 1798.24, subdivision (g), and constitutes “nonpersonal” information for purposes of section 1798.3, subdivision (c).

However, the matter is not so easily resolved. One complication is that the Legislature has provided that the Information Practices Act of 1977 does not supersede the California Public Records Act “except as to the provisions of sections 1798.60 and 1798.70.” (§ 1798.75.)

Under section 1798.70, information that is “accessible” under the Information Practices Act of 1977 supersedes the exemption from disclosure provisions of the California Public Records Act. This statute thus does not change the preliminary conclusions that we have reached.

Section 1798.60, on the other hand, states “an individual’s name and address may not be distributed for commercial purposes, sold or rented unless such action is specifically authorized by law.” This statute requires closer analysis.

First, we know of no laws that specifically authorize the Department of Real Estate to distribute for commercial purposes, sell or rent the names and addresses of real estate license applicants.

Second, “commercial purpose” is defined in section 1798.3, subdivision (1), as “any purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.”

The disclosure of the names and addresses of real estate license applicants to members of the news media by the Real Estate Commissioner thus may be outside the

⁴ The Information Practices Act of 1977 is aimed at “the maintenance and dissemination of personal information” (§ 1798.1 subd. (c)) and “applies to personal and confidential information, except as otherwise specified, and does not apply to nonpersonal information.” (§ 1798.2.)

“commercial purpose scope of section 1798.3, subdivision (l), on the basis that such information would constitute newsworthy facts.

We realize that once a publisher or broadcaster disseminates the names and addresses of license applicants as newsworthy facts, those wishing the information for commercial purposes will be so informed. Additionally, it may be impossible for the Department of Real Estate to make certain that distribution not be made to those with a commercial purpose. Moreover, it is questionable whether “nonpersonal” names and addresses under subdivision (c) of section 1798.3 would come within the commercial purpose prohibition of section 1798.60 in light of section 1798.2 (“this chapter . . . does not apply to nonpersonal information.”).

The other complication is the current wording of section 1798.61 and its legislative history. Originally, the statute provided: “Nothing in this chapter shall prohibit the release of only names and addresses of persons applying for or possessing licenses to engage in professional occupations.” (Stats. 1971, ch. 709 pp. 2284–2285; emphasis added.) In 1978, the Legislature deleted the phrase referring to license applicants: “*applying for* or” (Stats. 1978, ch. 874, p. 2933.) It was this amendment that caused the Real Estate Commissioner to change his practice concerning the disclosure of license applicants’ names and addresses. In 1979, the statute was again amended and now reads as follows:

“(a) Nothing in this chapter shall prohibit the release of names and addresses of persons possessing licenses to engage in professional occupations.

“(b) Nothing in this chapter shall prohibit the release of only names and addresses of persons applying for licenses to engage in professional occupations for the sole purpose of providing such persons with informational materials relating to available professional educational materials or courses.” (Stats. 1979, ch. 143, p. 561.)

It is arguable that section 1798.61, as amended, presently indicates the Legislature’s intent to restrict the disclosure of the names and addresses of applicants for professional licenses to those persons in the business of providing “materials relating to available professional educational materials or courses” and to no others.

We cannot agree, however, with such a restrictive interpretation of section 1798.61. Rather, we read the statute as merely an exception to the commercial purpose prohibition of section 1798.60. Section 1798.61 is not phrased in prohibitory language but refers to the other general provisions of the statutory scheme; the other provision that would normally be applicable is section 1798.60. Obtaining information in order to sell educational

materials or courses would ordinarily constitute a prohibited commercial purpose. As previously analyzed, however, disclosure of newsworthy facts to members of the news media is not within the commercial purpose prohibition.

Viewing the statutes as a whole (see *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230), we conclude that section 1798.61 does not prohibit the Real Estate Commissioner from distributing the names and addresses of real estate license applicants as newsworthy information to members of the news media. Moreover, this interpretation avoids the possible difficulty in harmonizing section 1798.61 with section 1798.2.

In summary, the Information Practices Act of 1977 is directed at the maintenance and dissemination of personal information. A person's name or address is not considered personal information under certain conditions. We believe that those conditions have been met with regard to the names and addresses of real estate license applicants. Such information can be considered newsworthy and not obtained for a commercial purpose by members of the news media under the statutory scheme. Additionally, such information is not exempt from inspection under the California Public Records Act based upon the limited facts given.

The conclusion to the question presented, therefore, is that the provisions of the Information Practices Act of 1977, as amended, do not preclude the Department of Real Estate from disclosing the names and addresses of real estate license applicants to members of the news media.
